

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	Administrator Correspondence Dated
Universal Service Administration Corp. for)	September 25, 2013
The Sharon Academy)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review or Waiver

In accordance with sections 54.719 through 54.721 of the Commission's rules, The Sharon Academy, Sharon, VT (TSA) requests Federal Communications Commission (Commission) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). Consistent with precedent, TSA asks the Commission to overturn this decision and restore badly needed funding to TSA.¹

Form 471 Application Number: 870755
FRN: 2374677, 2374680 and 2374684
Billed Entity Number: 209764

Background

The Sharon Academy is located in rural Vermont. TSA's geographic isolation makes broadband connectivity more costly than urban areas but also more critical to the community, as there are very few alternative sources of public internet in the county.

¹ Annette Islands School District, DA 12-323, Rel. Mar 12, 2012 (Annette), Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry), Alaska Gateway Decision, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway) and Arkansas Department of Information Systems, DA 08-1418, Rel. June 13, 2008 (Arkansas), CC Docket No 02-6

TSA applied for E-Rate discounted funding for telecommunications service and internet access for funding year 2012. TSA was funded for discounts in a Funding Commitment Decision Letter (FCDL) dated February 12, 2013, more than halfway through the fund year. This timeline pushed TSA's Form 486 deadline to the June 12, 2013.

When the TSA subsequently filed a Form 486 on September 12, 2013 for all three (3) FRNs, the Administrator issued a Form 486 Notification Letter dated September 25, 2013 indicating that because the Form 486 was filed more than 120 days after the Funding Commitment Letter and the Service Start Date, the Administrator adjusted the Service start date to 120 days before the postmark of the Form 486 – May 15, 2013 – only a month and a half before the close of the 2012 fund year. The resulting commitment adjust has left TSA with only 1.5 months of funding for the entire 2012 Funding Year.

This missed Form 486 deadline is due to the following events. In 2012 and the beginning of 2013, all of TSA's E-Rate filing was handled by the IT Specialist, the only IT staff at this small, private school. Unfortunately, this IT Specialist, the exclusive manager of the E-Rate program, was on medical leave in the fall of 2012 for cancer treatment, subsequently returning on a very limited work schedule just prior to the FCDL being issued on February 12, 2013. It is with great regret that we include the information that this staff person subsequently passed away on March 5, 2013.

Because of these sad circumstances, from this past May, until the beginning of the current school year, there was no one on staff at TSA with any knowledge of E-Rate program rules. No other school employee had any E-Rate training, experience, or any familiarity with TSA's E-Rate history or current status. The administrative support staff who received the February 12, 2013 FCDL believed the school had received funding and did not understand the urgent need to file a Form 486 prior to the 120 day deadline.

It is important to note, however, that TSA hired a new IT Director at the beginning of this school year. He has been tasked with handling all E-Rate filing in a timely manner. Within weeks of being hired, the missed deadline for the 2012 Form 486 was discovered and Form 486 # 976366 was then filed on September 12, 2013.

Discussion

Given the disruption in school IT operations caused by the former IT Specialist's extended sick leave and subsequent death in March of 2013, the 3 month deadline lapse wasn't discovered by TSA until the new IT Director took over in September 2013. Because of the budget shortfall, TSA may not be able to upgrade to the internet bandwidth they had anticipated which would have a significant impact on faculty, staff and students. The Commission has recognized that factors such as hardship, equity, and the public interest may properly be taken into consideration when determining whether to grant a waiver for missed deadlines.²

In September, the new IT Director assumed his responsibilities, including the daunting task of learning how to navigate the entire E-Rate program. He diligently worked to determine the library's E-Rate funding status and upon discovering this deficiency moved quickly to address it. The new Director's immediate actions reflect a good faith effort to comply with the program's requirements.³

The Commission has recognized a meaningful distinction between substantive and procedural deficiencies on the part of applicants, and in this case, the library's missed deadlines reflect only the latter. In Bishop Perry, the Commission specifically held that staff illness⁴ and the corresponding unavailability of E-Rate trained staff constituted special circumstances sufficient to justify granting a waiver. Additionally, the Commission has held that a complete rejection of payment is unwarranted where, as here, the missed deadline was a USAC procedural deadline and not a violation of a Commission rule⁵. Particularly in these kinds of cases, where there is a special circumstance and no evidence of any fraud, waste or abuse, the Commission has acknowledged that, "rigid compliance...does not further the purposes of section 254(h) or serve the public interest."⁶

² Annette Island School District, FCC DA 12-1666, Rel. October 17, 2012 (Annette). The FCC granted 14 appeals, effectively granting waivers of the Form 486 deadline.

³ Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry)

⁴ Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry) At 14, the Commission discussed at length what circumstances warrant granting an appeal and waiver.

⁵ Alton Order, 25 FCC Rcd at 7093, para. 6.

⁶ Alaska Gateway Decision, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway), CC Docket No 02-6

The Commission has granted waivers for the Form 486 deadline for numerous applicants based on precedent in the Alaska Gateway **Decision**.⁷ In that landmark decision, the Commission found good cause to waive the Form 486 procedural deadline, noting that the missed deadline does not involve violation of a FCC rule or regulation. Additionally, the Commission has granted such waivers where, “staff mistakes of confusion result[ed] in ... untimely filing the FCC **Form 486**”.⁸

Conclusion

TSA respectfully requests that the FCC waive the filing deadline for the Form 486 based on numerous Commission decisions. Special circumstances affected TSA’s ability to timely file Form 486. We ask the Commission to instruct the Administrator to reset the service start date for these FRNs to July 1, 2012 and restore critically needed funding for The Sharon Academy.

Respectfully submitted this 22nd day of November, 2013,

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⁷ Request for Review of Decision of the Universal Service Administrator by the Alaska Gateway School District, DA 06-1871, File Nos. SLD-412028, et al., CC Docket No. 02-6 (Order released September 14, 2006)

⁸ Arkansas Department of Information Systems, DA 08-1418, Rel. June 13, 2008 (Arkansas), CC Docket No 02-6